

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Warner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5586

PETITION OF SCOTT AND COURTNEY PASTRICK
(Hearing held May 23, 2001)

OPINION OF THE BOARD
(Effective Date of Opinion, July 19, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chapter 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a) and 59-C-1.323(b)(1). The petitioners propose to construct a two-story addition that requires variances of: 3.23 feet as it is within 4.77 feet of the side lot line and 11.83 feet as it is within 22.17 feet of the front lot line. The required side lot line setback is eight (8) feet and the required front lot line setback is thirty-four (34) feet.

Anthony S. Barnes, the petitioners' architect, appeared with the petitioners at the public hearing.

The subject property is Lot 22, Block A, Sumner Park Subdivision, located at 5416 Falmouth Road, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 00692973).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 24.88 x 33.00 foot two-story addition at southwest section of the residence.
2. Mr. Barnes testified that the property is located at the intersection of Falmouth Road and Cardinal Court. Cardinal Court is a private road not maintained by the County. Cardinal Court borders the petitioners' property at its western and northern property lines. Mr. Barnes testified that the property is a five-sided lot and that fronts on three roads. See, Exhibit No. 12.
3. Mr. Barnes testified that the residence fronts on Cardinal Court and that the property's topography on the eastern side of Cardinal Court has a steep upward slope. See, Exhibit No. 13(d). Mr. Barnes testified that an existing pool is located in the rear yard and that the structure is located eight feet from the residence. See, Exhibit Nos. 13(f) and (g).
4. Mr. Barnes testified that the property is built over a spring and that the property has existing water problems. Mr. Barnes testified that the water problems have resulted in continuous leaks and severe humidity in the basement of the residence. Mr. Barnes testified that the continuing water problems have also resulted in unstable and wet soil in much of the center of the lot and has rendered that the basement almost unusable.

5. Mr. Barnes testified that the two-story addition has been reduced to its smallest dimensions and that the addition can not be moved backward on the lot because it would not permit an adequate turnaround area for a vehicle.
6. The petitioners' testified that they have spoken with their neighbors and that the neighbors support the variance request. A petition of support was entered in the record as Exhibit No. 4.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is built over a spring, is an unusually shaped lot, fronts on three roads, and has a severe upward slope at its eastern side yard boundary. The Board finds that the property's conditions are unique and result in an undue hardship upon the petitioners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a two-story addition are the minimum reasonably necessary to overcome the property's unique conditions.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.*

The Board finds that the record contains no testimony or correspondence in opposition to the variance request and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 3.23 feet from the required eight (8) foot side lot line setback and of 11.83 feet from the required thirty-four (34) feet front lot line setback for the construction of a two-story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 7(a) and (b) and 8(a) through 8(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Mindy Pittell Hurwitz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 19th day of July, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.